



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Building Automation Services, Inc.

**File:** B-247891

**Date:** June 5, 1992

Martin W. Casciola for the protester,  
Paul D. Warring, Esq., Department of the Air Force, for the  
agency.

C. Douglas McArthur, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

### DIGEST

An agency's defense of its evaluation of the protester's proposal at a debriefing held after it received an agency-level protest alleging that the evaluation of the protester's proposal was unreasonable constitutes initial adverse agency action on the protest such that any subsequent protest to the General Accounting Office must be filed within 10 working days of the debriefing.

### DECISION

Building Automation Services, Inc. (BAS) protests the rejection of its offer submitted under request for proposals (RFP) No. F49642-91-R-A325, issued by the Department of the Air Force for maintenance and repair of energy systems. We dismiss the protest as untimely.

On September 12, 1991, the agency issued the solicitation for a firm, fixed-price contract for services for maintenance and repair of the energy management control system (EMCS) at Andrews Air Force Base, Maryland for a base period with three 1-year options. The statement of work consisted of five parts: general duties; definitions; two parts enumerating the duties of the agency and the contractor for providing supplies and services; and section C-5, the specific tasks that a contractor would perform, including initial, routine, and emergency maintenance.

The solicitation provided for award based on the offer most advantageous to the government, considering technical and price related factors, with technical factors of greater importance. Technical factors included the following: key personnel (experience in repair of EMCS, as well as heating and air conditioning systems); performance plan; detailed

management plan; corporate background and history; references; and certification that the offeror would acquire replacement parts as needed and provide a current list of inventory of parts and equipment.

The agency received two proposals on October 15, referred them to its evaluation committee, identified weaknesses and deficiencies in the proposals, and conducted discussions. The agency originally advised the protester of the weaknesses and deficiencies of its proposal by letter dated November 22; the protester did not receive this letter but did receive a letter dated December 3, which repeated the requests for information of the earlier letter and which requested the protester to submit a revised technical proposal and best and final offer (BAFO) by December 9.

By letter dated January 13, 1992, the agency notified the protester that it had completed its technical evaluation and had found the BAS proposal unacceptable based on deficiencies in the area of key personnel, performance plan, management plan, and certification. The protester requested a debriefing, which the agency scheduled for January 30. On January 29, 1 day prior to the debriefing, BAS filed a protest with the contracting officer, alleging that contrary to the conclusion of the technical evaluators, its proposal contained adequate evidence of its ability to perform in each of the areas found unacceptable and that the evaluation was therefore unreasonable.


At the debriefing, the agency acknowledged that it had received the protest. The agency again stated that it found the proposal unacceptable. The agency repeated its findings with respect to the lack of information to establish the proposal's acceptability in the four areas that the January 13 letter had identified as unacceptable. On February 25, the agency provided a formal written denial of the agency-level protest, with no modification or alteration of the position that it took at the debriefing, which was that the protester's proposal contained insufficient information for the agency to determine its acceptability in the four areas of key personnel, performance plan, management plan, and certifications. This protest followed.

Our Bid Protest Regulations, 4 C.F.R. part 21 (1992), provide that protests, other than those based on alleged solicitation improprieties, must be filed with either the contracting agency or this Office within 10 working days of when the basis for the protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). If a protest has been filed initially with the contracting agency, any subsequent protest to this Office must be filed within 10 working days of the protester's actual or constructive knowledge of initial adverse agency action on the agency-level protest.

4 C.F.R. § 21.2(a)(3). Initial adverse agency action is the first action, or inaction, by an agency that is prejudicial to the position taken in a protest at that level. See LinCom Corp.--Recon., B-231806.2, Aug. 10, 1988, 88-2 CPD ¶ 130. Initial adverse agency action may consist of the agency's defense and reaffirmation of its evaluation at a debriefing conference. See J.A. Jones Constr. Co., B-227296, Sept. 1, 1987, 87-2 CPD ¶ 215.

The protest filed with our Office is no more than a restatement--in major portion, a direct copy--of the protest filed with the contracting officer prior to the debriefing. In our view, the protester was on notice as a result of the debriefing that contrary to what BAS asserted in its agency-level protest, the agency believed that it had properly evaluated the protester's proposal, had identified the weaknesses and deficiencies in the proposal in the course of discussions and had extended BAS the opportunity to correct those weaknesses and deficiencies through submission of a revised proposal. The agency did not modify its determination that the revised proposal submitted by the protester still lacked the information necessary to establish its technical acceptability. Accordingly, we find that BAS' protest to our Office, on March 10, is clearly untimely under 4 C.F.R. § 21.2(a)(3), since the agency's defense of its actions at the debriefing constituted initial adverse agency action following BAS' protest to the contracting officer. As such, BAS should have filed any subsequent protest to our Office within 10 working days of the January 30 debriefing.

We dismiss the protest.

  
Michael R. Golden  
Assistant General Counsel